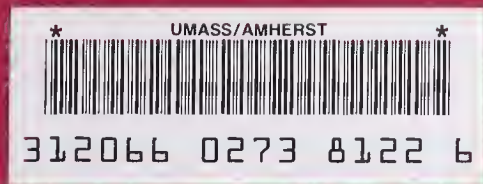


MASS. ED59.2:P21



A PARENT'S GUIDE TO THE SPECIAL EDUCATION APPEALS PROCESS



GOVERNMENT DOCUMENTS
DEC 09 1992
University of Massachusetts
Depository Copy

Massachusetts Department of Education
Bureau of Special Education Appeals
1385 Hancock Street
Quincy, MA 02169
(617) 770-7498

423/25

Massachusetts Board of Education

Martin S. Kaplan, Esq., Chairperson, Newton
Mr. William K. Irwin, Jr., Vice Chairperson, Wilmington

Ms. Eleanor W. Bliss, Westfield
Mr. John J. Gould, Boston
Dr. Jerome H. Grossman, Chestnut Hill
Dr. Madelaine S. Marquez, Amherst
Mr. S. Paul Reville, Worcester
Dr. Richard R. Rowe, Belmont
Rev. Michael W. Walker, Brockton
Dr. Joan Wallace-Benjamin, Boston

Dr. Robert V. Antonucci, Commissioner of Education, Secretary

Mr. John David Cashman, Marblehead, Chairperson, Student
Advisory Council, Ex Officio

Dr. Piedad F. Robertson, Secretary, Executive Office of Education,
Ex Officio

Mr. Paul G. Marks, Chancellor, Higher Education Coordinating
Council, Ex Officio

Prepared by the Bureau of Special Education Appeals
Kristen Apgar, Director
and the
Division of Special Education

May 1992

The Massachusetts Department of Education insures equal employment/educational opportunities/affirmative action regardless of race, color, creed, national origin or sex, in compliance with Title IV and Title IX, or handicap, in compliance with section 504.

COMMENTS FROM THE DIRECTOR OF THE BUREAU OF SPECIAL EDUCATION APPEALS (BSEA)

This guide is designed to assist you, as parents, and others who may be new to the special education mediation and hearing process, in understanding how the appeals procedures operate, and how they may be of assistance to you in resolving disagreements over the provision of appropriate special education.

In addition to this guide, you may also wish to consult the following other sources, which can be obtained from the Bureau:

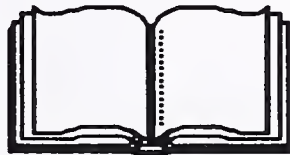
State and Federal Regulations Governing Hearings

Hearing Procedures

List of Free or Low Cost Advocates and Attorneys

List of Impartial Hearing Officers and their Qualifications

Appeals News





Digitized by the Internet Archive
in 2013

<http://archive.org/details/parentsguidetosp00mass>

CONTENTS

	Page
Comments From The Director Of The Bureau Of Special Education Appeals	
Words You Need To Know	1
What Can You Do If You Disagree With The Special Education Plan Offered To Your Child?	4
Mediation	5
Hearing Procedures	7
What Is A Hearing?	7
Where and When Hearings Are Scheduled	7
Prehearing Conference	8
Length Of Hearing	8
What Must Be Proven	8
Attorneys	9
Evidence	9
Hearing Officer Decision	11
Appealing The Decision	11

IMPORTANT WORDS TO KNOW

These definitions are intended to give you a working knowledge of terms commonly used in discussing the special education process. They do not in all cases restate or summarize the precise language found in the regulatory definitions which appear in the Chapter 766 Regulations. For those legal definitions, see Chapter 1 of the Regulations.

ADMINISTRATOR OF SPECIAL EDUCATION

A person in charge of all special education programs and services in your public school system.

ADVOCATE

There are two types of advocates.

1. One is a person you may choose or hire to support you and help you through the evaluation and appeal process. This is a private, independent advocate.
2. The other is a person called an Educational Advocate (sometimes referred to as a surrogate parent) who is assigned by the Department of Education to act on behalf of a child when the child's parents are unavailable or have no educational decision-making rights. This person cannot be an employee of any state agency which educates or cares for the child.

ASSESSMENT

Either a test or an observation which describes your child's ability in a specific area such as medical, educational, psychological, developmental, speech, hearing, vision, etc.

EDUCATIONAL OBJECTIVES

Specific measurable skills toward which your child will be working, such as improving reading fluency and comprehension by six months' growth.

EVALUATION

A group of tests, assessments, and other critical information about your child which determine whether your child has a special need and what your child's strengths and areas of need are. This forms the basis for determining whether your child is eligible for special education and, if so, for developing his or her Individualized Educational Plan (IEP).

EVALUATION TEAM (TEAM)

A group which includes the child's parent(s), teachers, and other specially trained people who will find out what your child can do, whether s/he has a disability which is causing your child's problems in school, what areas s/he is having difficulty with, and what services s/he needs in order to progress effectively in school.

EVALUATION TEAM CHAIRPERSON

The member of the evaluation TEAM who is responsible for coordinating all of the activities of the TEAM, conducting the actual TEAM meeting, organizing all forms and materials needed for your child's evaluation, and helping to choose and contact any needed specialist(s).

FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

Special Education and related services which:

- (a) are provided at public expense;
- (b) meet state education standards;
- (c) include preschool, elementary school, or secondary education;
- (d) are provided in accordance with an IEP, and
- (e) assure maximum possible development in the least restrictive environment.

HEARING

A formal administrative procedure conducted by the Bureau of Special Education Appeals to resolve disputes between the parent and the school district over such things as the identification, evaluation, actual/proposed placement of a child, program implementation, etc.

INDEPENDENT EVALUATION

An evaluation at your request and at school committee expense that: (a) is similar to the school's original evaluation, and (b) is performed by a person certified or otherwise qualified to perform the evaluation and who agrees to accept the rates established by the state agency responsible for setting such rates. This provides you with a second opinion if you are unsure about or disagree with the results from the initial evaluation. You may also choose to have an independent evaluation at your own expense. The TEAM will consider the independent evaluation in its planning process.

INDIVIDUALIZED EDUCATIONAL PLAN (IEP)

The plan prepared by the TEAM which describes any special needs your child has and outlines the educational programs and services which will be provided to meet those needs if you accept the IEP.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

The program and placement which assures that your child is educated to the maximum extent appropriate with children who do not need special education, and that special classes or separate schooling are used only when s/he cannot be educated in regular classes even with extra aids and services.

MEDIATION

An informal, voluntary process conducted by the Bureau of Special Education Appeals to resolve disputes over such matters as the identification, evaluation, or placement of a child. This process is suggested but not required before proceeding to a hearing.

PARENTS' RIGHTS BROCHURE

A brochure produced by the Massachusetts Department of Education, Division of Special Education, which is designed to help you to understand your rights and your child's rights in the special education evaluation and placement process.

PROTOTYPE

A measure of special education service referring to the location of services and/or the amount of time a child receives special services within or outside of the regular education classroom.

REFERRAL

A request to have your child evaluated to see if s/he has a special education need. This step begins the evaluation process for your child if you give your written consent.

RELATED SERVICES

Transportation, developmental, corrective, and supportive services which are required to assist a child in need of special education, including the services described in paragraph 503.0 of the Chapter 766 Regulations.

SCHOOL WORKING DAYS

Days when school is in session.

SPECIAL EDUCATION

Specially designed instruction which meets the unique needs of a child who has been evaluated and found to be in need of special education and which is provided at no cost to parents or guardians.

SPECIALIST

A specially trained person, such as a psychologist, occupational therapist, speech therapist, or physician.

WHAT CAN YOU DO IF YOU DISAGREE WITH THE SPECIAL EDUCATION PLAN OFFERED TO YOUR CHILD?

When you disagree with all or part of your child's Individualized Educational Plan (IEP), you must indicate that decision on the page of the IEP which requires your signature and return the plan to your school district.

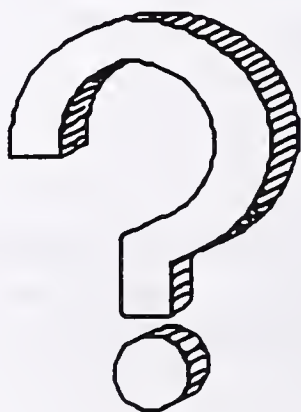
Within five days after they receive the notice that you have rejected all or part of an Individualized Educational Plan, your school district will send a copy of your rejection to the Bureau of Special Education Appeals (BSEA). The BSEA will write to you to explain your choices.

1. You and your school district may settle differences voluntarily and informally with an impartial mediator. If you contact the mediator to request a mediation, s/he will arrange the session with your school district. If the mediation does not result in agreement, you or your school district may still request a hearing.

- or -

2. You may immediately request a hearing to resolve differences. You must request it in writing to the BSEA, and it will be scheduled for 20 days from the receipt of the request. Even if you or your school district decide to go directly to a hearing, you may agree to postpone the hearing in order to try mediation.

The BSEA will send you a list of free or low cost attorneys and advocates available to assist you with special education hearings.



What Is Mediation?

Mediation is a voluntary process in which you and the school agree to participate. It may not be used to delay your right to a timely hearing. Mediation provides an alternative method to resolve conflicts, clarify issues, and promote problem-solving efforts between parents and school personnel. The goal is to work out a solution to a conflict which is acceptable to both parties and in the best interest of the child. The mediator will help to define and clarify the issues in dispute and may assist in identifying options that satisfy both parties. In a majority of cases, mediation results in successful agreements between parents and public schools. If you choose to schedule a mediation or want more information about mediation, you can contact the BSEA.

How Is A Mediation Session Scheduled?

If you and your school district agree to participate in mediation, the mediator will arrange a date, time and place agreeable to all.

What Happens At Mediation?

Usually mediations are held at the offices of the public school district. The mediator will conduct the meeting and assist you and school personnel in discussing the necessary information. S/he will ask you to discuss your child's special education needs and the components of a program you are seeking to meet those needs. The school representatives will have an opportunity to speak about their view of your child's special needs and also what services they are offering as of that date (this may or may not differ from the proposed IEP). The parties may also meet separately with the mediator (in caucus) to discuss their concerns confidentially. The mediator will assure that each person is given a chance to talk, make and evaluate offers, and consider options without undue pressure. Parents and the school will have the opportunity to understand each other's perspective and feel that their own viewpoint is understood.

You may have an attorney or advocate with you at this meeting. The mediator is available before, during, and after the session to answer any questions about special education and the appeals process. The mediator will ask you and the school to limit the number of persons whom you ask to attend the mediation to two or three. The school will also be asked to be certain that at least one person at the mediation has the authority to reach an agreement on

behalf of the school district. If you reach an agreement through mediation, the agreement will be written and signed by you and the school, and in most cases go into effect immediately. Any discussions which occur during mediation are confidential and may not be used as evidence at a hearing.

How Is Mediation Different From A Hearing?

Mediation differs from a hearing in several ways:

1. It is more informal;
2. It is shorter in time (usually two to four hours, as opposed to one to three days or more);
3. It usually does not involve lawyers (although you have the right to have one with you, if you choose); and
4. It allows you and the school to negotiate your own agreement rather than have a decision imposed by a hearing officer.



What Is A Hearing?

A special education appeals hearing is a formal, administrative hearing conducted by a hearing officer of the Bureau of Special Education Appeals. The hearing officer is a different person than the mediator and is employed just to conduct special education hearings. The hearing officer will decide your case based on the evidence that you, your attorney, or your advocate, and the public school and its attorney present at the hearing. The hearing officer will only consider evidence submitted by you or the public school. BSEA hearings are closed to the public and all evidence is kept confidential, unless you choose to open the hearing to the public.

The evidence at a hearing can be in the form of written documents or testimony from witnesses. This is called the hearing record. Usually both types of evidence are part of the record. After the testimony has been heard and the evidence has been reviewed, the hearing officer will issue a decision determining what special education program best meets your child's needs in accordance with Chapter 766 and the IDEA (the federal special education law).

How, Where, And When Are Hearings Scheduled?

The BSEA will schedule your hearing for twenty days from the date that it receives a written request for a hearing from you or the public school. A hearing officer will be assigned to your case, and you will receive a notice from the BSEA with the date of the hearing and the name of the hearing officer. Notice of the hearing will also go out to your public school district administrator of special education.

Because of the information that must be in place and witnesses who must be available in order for the hearing to proceed, you or the public school may want to request postponement or rescheduling of the hearing. This request should be made in writing. It is up to the hearing officer to determine if the request for postponement is reasonable, and to set a new date for the hearing.

BSEA hearings are held either in the offices of the Department of Education or at another location that the hearing officer determines is reasonably convenient to the parties. Hearings are held during normal working hours, usually between 9:30 a.m. and 5:00 p.m.

What Is A Prehearing Conference?

Usually BSEA hearing officers hold prehearing conferences prior to the day that the actual hearing begins to see if the case can be settled -- something that happens quite frequently. The prehearing conference helps the hearing officer to understand the positions of the parent and the public school and to clarify the issues in dispute.

How Long Does It Take To Complete A Hearing And Get A Decision?

The BSEA hearing officer is required to hold a hearing and issue a decision in your case within 45 days of the date that the BSEA receives your written hearing request. However, the hearing officer may grant reasonable extensions of time to you or to the public school. Because of the amount of documentary evidence and the number of witnesses who may need to testify at a hearing, the hearing may take a number of days.

When you are requesting a hearing, you should take into account the time it may take you to obtain a lawyer (and his/her schedule); the importance of having a completed independent evaluation; the need to have your witnesses available and prepared to testify; and the availability of witnesses and documents which relate to any special education services or placements that you want the hearing officer to order. Time must be allowed for witnesses to be subpoenaed and for meeting the requirement that you and the public school exchange copies of your witness lists and documents five days before the hearing.

What Do You Have To Prove At The Hearing? What Does The Public School Have to Prove?

Both the parent and the public school have to present a case at a hearing. Generally, the public school must show, through its witnesses and documents, that it has offered an appropriate special education program for your child, that it has provided the services called for in the current IEP, that the IEP meets the substantive and procedural requirements of Chapter 766 and the IDEA and their regulations, and that its program will provide for your child's maximum educational development in the least restrictive environment.

However, if you are contending that the public school has not provided an appropriate program and you want a different program or services, then you must show through the documents and testimony of witnesses, that the public school program does not meet your child's needs. You must also show how the program you are requesting provides for your child's maximum educational development. This is also true if you are asking the hearing officer to order reimbursement for a program or services for your child that you paid for after you rejected the public school's IEP or gave notice to the school that the program it was offering was not appropriate.

Do You Need An Attorney To Go To Hearing?

You have the right to be represented by an attorney or an advocate at a special education hearing, or you may represent yourself. It is very common for both the public school and parents to have their lawyers at BSEA hearings. Because the hearings may be complicated and the issues are often emotional, it is usually advisable to have either an attorney or an experienced advocate assist you at the hearing. The BSEA will send you a list of free and low cost attorneys and advocacy services. If you are represented by an attorney at the BSEA hearing, and you prevail at that hearing, the public school is required to pay your reasonable attorney's fees.

If you choose to represent yourself in the hearing, the hearing officer will attempt to assist you in presenting your case, but s/he is a neutral party, and cannot serve as your advocate.

Once the hearing officer is informed that you are represented by an attorney or an advocate, the hearing officer will communicate with that person regarding the scheduling or any other matters pertaining to the hearing, because s/he becomes your legal representative.

What Kind Of Evidence Do You Need For A Special Education Hearing?

a. Documents

Some of the documents that are likely to be submitted as evidence in a hearing are your child's IEP(s); reports from individuals who have evaluated your child, such as teachers, school psychologists, a pediatrician, or an independent evaluator or hospital; report cards, progress reports and other student records; information on the staffing and qualifications of teachers or service providers; and information about the program you are requesting, or the program that is being offered by the public school.

You or your attorney or advocate must give a copy of any documents that you want to submit as evidence at the hearing to the public school and the hearing officer at least five days before the date of the hearing. You must also state in writing who you will call as witnesses to testify. The public school must follow the same procedure and provide you with its documents and a list of witnesses five days before the hearing. The hearing officer may also ask the parties to provide written statements of their legal positions at the beginning or end of the hearing.

b. Witnesses

Some of the people who usually testify at the hearing are: you, as the parent of the child; sometimes the child (you may always have your child attend the hearing, if you wish); your child's teachers; the administrator of special education from the public school; the individuals who evaluated your child, either at your request or at the request of the public school; the individuals who evaluated your child, either at your request or at the request of the public school; and individuals who are familiar with the program(s) being offered by the public school or the programs that you are requesting. Anyone who testifies at the hearing will be testifying under oath. The witnesses that you present will be asked questions by you or your attorney or advocate (direct examination). Then the public school representative will cross examine your witnesses. Sometimes the hearing officer will also ask questions. You or your attorney will also be able to cross examine the witnesses presented by the public school. If you or your attorney or advocate want to require a person to appear at the hearing to testify, you can request in writing that the BSEA subpoena that person, and it will do so. If you wish that person to bring with her/him documents that they have in their possession, those documents can be subpoenaed, too.

c. Recording The Hearing

The hearing officer will tape record the hearing. You may have a free copy of the tape, if you request it in writing, following the completion of the hearing.

What Will The Hearing Officer Decide?

Under Chapter 766 and the IDEA, the hearing officer must issue a decision which calls for the special education program for your child which provides the maximum feasible development in the least restrictive educational setting. The hearing officer has the authority to order the placement or services that you request, the placement or services offered by the public school, or another placement or services, if s/he determines that is appropriate. The hearing officer is required to base the decision only on the evidence presented at the hearing and admitted into the record.

After the hearing is completed and the parties have submitted any written statements, the hearing officer will issue a written decision. That decision will be mailed to you, the public school, and your legal representatives, if any.

What If You Are Unhappy With The Decision Of The BSEA?

You have the right to appeal the BSEA decision to state or federal district court within 30 days from the date that you receive the written decision. If you appeal the decision, your child will remain in the last educational placement that was agreed to by you and the public school, unless you and the public school agree on a different temporary placement, while the court reviews the BSEA hearing decision. If you do not appeal the decision, the public school will implement the BSEA decision, unless you wish your child to be in regular education. Then the public school must put your child in regular education, unless it obtains court enforcement of the BSEA decision.

What If The Public School Does Not Like The BSEA Decision Or Refuses To Implement It?

The public school must also abide by the hearing officer's decision, and must appeal the decision if it disagrees with it. If the school district appeals the decision, your child will stay in the last agreed upon educational placement. However, if the hearing officer orders a new placement for your child, and you agree with that new placement, then the public school must place your child in that new placement, even if it chooses to appeal the decision.

If you think that the school district is not implementing the hearing officer's decision, you may request a compliance hearing. The hearing officer will determine if the school district is implementing the decision, and if necessary, will seek enforcement.

